Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

October Term 1998

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EDNA M. JENNINGS

Petitioner

v.

SANDRA E. COUTSCOUDIS, ET AL.

Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO

THE DISTRICT OF COLUMBIA
COURT OF APPEALS

---

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42 pp

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Superior Court's ruling in quashing the Plaintiff's Summons and Complaint which was served upon defendant s for lack of in personam jurisdiction, derogated the District of Columbia Reorganization Act of 1970 and/or its own Rule SCR-4(f), which defined the territorial limits of the Court, thereby depriving the Plaintiff of her right to due process of law under the Fifth Amendment and the equal protection of laws of the Fourteen Amendment of the United States Constitution?

2. Whether the Court violated the Plaintiff's Fifth Amendment rights to due process and equal protection of law when it quashed the Plaintiff's Service of Summons and Complaint upon the non-resident Defendants, for lack of in personam jurisdiction, when the Defendants resided within geographical proximity of less than a fifty (50) miles radius of the District of Columbia.

## PARTIES

The parties to the proceedings in the District of Columbia Court of Appeals _____ The Court, whose Judgment is sought to be reviewed _____ were;

Edna M. Jennings, the Plaintiff

(Petitioner herein)

and

Sandra E. Coutscoudis

and

Constantinos Coutscoudis

(Respondents herein)

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## OPINIONS BELOW

The Opinion of the District of Columbia Court of Appeals was reported on April 24, 1998 (D.C. App. 1998) and is printed in the Appendix.

The Order of the District of Columbia Court of Appeals, denying the Motion of the Petitioner below for Rehearing En Banc was reported on July 29, 1998 and is printed in the Appendix.

## JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on April 24, 1998. A timely Petition for Rehearing En Banc was filed, on May 13, 1998 and denied on July 29, 1998.

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

## CONSTITUTIONAL PROVISIONS STATUTES AND RULES INVOLVED

This case involves the Fifth and Fourteenth Amendments to the Constitution of the United States. The District of Columbia Reorganization Act of 1970, Superior Court Civil Rules 4 (c) and (f), D.C. Code 13-331, 13-422, 13-423, and 13-424, 1983 Edition, as Amended.

## STATEMENT OF THE CASE

The Petitioner, Edna M. Jennings, domiciled in and a resident of the District of Columbia, sustained personal injuries on August 26, 1993, when her automobile was involved in a collision with an automobile driven by the Defendant, Sandra E. Coutscoudis on Route 3, in Spotsylvania County, Virginia.

The vehicle driven by Sandra E. Coutscoudis was owned by Constantinos Coutscoudis. Both defendants were residents of Spotsylvania County, Virginia.

In Spotsylvania County where the accident occurred, the District of Columbia is less than fifty (50) miles, in distance.

The plaintiff received some of her medical care at Mary Washington Hospital in Fredericksburg, Virginia, where she incurred a bill of $451.72, and subsequently had to seek extensive follow-up medical care and treatment in the District of Columbia and in nearby Oxon Hill, Maryland, where she incurred medical bills in excess of $15,400.00. She lost earnings from her employment with the District of Columbia Government, in the amount of $9,878.00.

Among her numerous injuries, was an injury which necessitated an operation on her wrist.

On September 26, 1995, Plaintiff, filed suit for personal injuries, in the Superior Court for the District of Columbia, her place of domicile, seeking damages against the Defendant, Sandra E. Coutscoudis, the driver of the vehicle which had caused her injuries, and the Defendant, Constantinos Coutscoudis, the owner of the said vehicle.

Despite diligent effort, there was some delay in effectuating timely service of process upon the Defendants in Spotsylvania County, Virginia. Therefore, in order to obtain service of the Summons and Complaint, Plaintiff filed a Motion to Extend Time to effectuate service of process upon the Defendants.

On December 6, 1995, the Superior Court of the District of Columbia, heard the Motion for Extension of Time to Serve the Service of Process upon the Defendants, and denied Plaintiff's Motion and dismissed Plaintiff's Complaint without prejudice.

On March 19, 1996, the Plaintiff refiled her complaint for damages for personal injuries against the Defendants, in the Superior Court of the District of Columbia.

On April 11, 1996, Plaintiff attempted to serve the Defendants by a Special Process Server. This attempt proved futile because an adult female at the Defendant's premises, refused to open the door and accept service of the Summons and Complaint.

On that same day, April 11, 1996, after the futile attempt by the Defendants by a

Special Process Server, Plaintiff caused to be mailed to the Defendants, by certified mail, a copy of the Summons and Complaint.

On April 20, 1996, the certified mail with return receipt requested, containing the Summons and Complaint which had been mailed to the Defendants was returned to Plaintiff, marked, "Refused".

Thereafter, Plaintiff by Motion to the Court, requested an Extension of Time to effectuate service of the Summons and Complaint upon the Defendants and requested authority from the Court to be allowed to serve the Summons and Complaint upon the Defendants by the Spotsylvania County Sheriff's Office.

On May 31, 1996, the Court granted Plaintiff's Motion to serve the Defendants by the Sheriff's Office of Spotsylvania County, Virginia.

On July 9, 1996, service of the Summons and Complaint were made upon the Defendants in Spotsylvania, Virginia by the Spotsylvania County Sheriff's Office.

Subsequently, on September 23, 1996, Defendants, through their Counsel, filed a Motion to Quash Service for Lack of in Personam Jurisdiction, and for Dismissal of the Plaintiff's Complaint. After a hearing thereon, the Court granted the Defendant's Motion to Quash the Service of Process and dismissed the Plaintiff's Complaint, relying upon Jenkins vs. Smith, 535 A.2d 1367, D.C. 1987), a forum non conveniens case.

Plaintiff filed a motion for Reconsideration but the Court denied the Motion for Reconsideration on October 21,

1996, this time simply quashing the Plaintiff's service of process for lack of in personam jurisdiction and alluding to the wording of its prior Order of September 23, 1996.

The Court's Order of October 21, 1996, being a final order, appeal was made to the District of Columbia Court of Appeals, pursuant to D.C. Code 11-721, 1981 Ed., as amended and Rules 3 and 4 of the D.C. Court of Appeals Rules.

On April 22, 1998, the Appellant's case appeared on the summary calendar of the District of Columbia Court of Appeals. At the request of Counsel for the Appellant, pursuant to an order of this Court, Appellant's Counsel was permitted to present oral argument to the Court.

On April 24, 1998, a three Judge panel of the Court, affirmed the Trial Courts Order, quashing service upon the Appellees and dismissed the Appellant's complaint for Lack of in Personam Jurisdiction upon the Appellees.

On May 13, 1998, the Appellant filed a Petition for Rehearing or Rehearing En Banc.

On July 29, 1998, the Appellant's Petition for Rehearing or a Rehearing En Banc was denied by a Per Curiam Order.

It is from this final Order of the District of Columbia Court of Appeal that the Appellant moves for issuance of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

## REASON FOR GRANTING THE WRIT

I

The quashing of the Plaintiff's Summons and dismissing the Complaint served upon the Defendant's, pursuant to a Court Order, derogated the broad general jurisdiction granted the D.C. Superior Court under the District of Columbia, Reorganization Act of 1970 and its own

Rule SCR-4 (f) and deprived the Plaintiff of due process rights under the Fifth Amendment and equal protection under the Fourteenth Amendment.

Prior to the enactment of D.C. Code, Section 13-422 and 13-423, 1983 Edition, as Amended, the Superior Court of the District of Columbia, exercised jurisdiction over a non-resident Defendant, if there was any basis consistent with the United States Constitution for exercise of personal jurisdiction. Subsequently, the Court relied upon the broadly expanded jurisdiction bestowed upon it by The Reorganization Act of 1970 and the Rules promulgated pursuant to the Reorganization Act of 1970.

Superior Court Rule 4, amended May 23, 1975, pertains to Service of Process and expanded the Court's territorial limits for purposes of jurisdiction.

SCR Rule-4(c) is a service rule, and delineates the rules for effectuating service for this Court upon non-resident Defendants.

Rule 4(c) sets out the methods for service of a Complaint and Summons as follows:

"Rule 4(c) by whom served

1) U.S. Marshall

2) Competent person

3) By Mail"

Under this Rule, service upon Defendants by certified mail, return receipt requested, is reasonably calculated to give adequate notice. Caravel Office Building Co. v. Peruvian Attache, 347 A.2d 280,, (1975); Renchard v. Humphreys and Harding, Inc., 59 FDR, 530, (D.C.C.) (1973) and Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct 652, 94 L.Ed 865 (1950).

Service under the Rule, contemplated notice consonant with the due process requirements of the United States Constitution. Environmental Research international, Inc., v. Lockwood Green Engineers, Inc., No. 7860 (1976).

Superior Court Rule 4(c) was given added heft by SCR-4(f). This Rule clarified its territorial limits. And says, territorial limits effective service.

> "All process other than a subpoena may be served by hand delivery or by mail anywhere within the territorial limits of the District of Columbia, and when authorized by an applicable statute or by these Rules, beyond the territorial limits of the District of Columbia."

To effectuate service and acquire personal jurisdiction over a nonresident defendant, residing in close geographical proximity to the District of Columbia, reliance was upon had upon, 4(f) which says...a subpoena may be

served by hand delivery or by mail anywhere within the territorial limits of the District of Columbia, and when authorized by an applicable statute or by these Rules, beyond the territorial limits of the District of Columbia.

And it is, and was by this implementation, an allusion to Rule 4(f) which has enabled the District of Columbia Superior Court, to assert its personal jurisdiction over non-resident Defendants residing in close geographical proximity to the District of Columbia.

Early on, the Safety Responsibility Act, enacted on May 25, 1954, had as its ostensible purpose, to confer personal jurisdiction over non-resident defendants, who had been involved in an accident in the District of Columbia with a District of Columbia motorist or pedestrian through the negligent operation of a motor vehicle, but this statute required an injured District resident to post a bond with the Superior Court to pursue his cause of action. The bond provision proved rather burdensome for District residents, so the statute was of limited benefit to residents of the District of Columbia.

<u>The Safety Responsibility Statute</u>, a remedial statute was enacted mainly to effectuate Service of Process upon non-resident defendant's who did not reside in close proximity to the District of Columbia and were beyond the reach of D.C. Sup. Ct. Rule 4(c) and 4(f).

As the District, increasingly became a mercantile community, with ingress and egress of non-resident mercantile traffic, these non-resident drivers, through the negligent

operation of their vehicles, would become involved in collisions with District motorists and pedestrians, and service of process had to be effectuated upon them in distant climes (jurisdictions), well beyond the reach of Superior Court Civil Rules 4(c) and 4(f), and made burdensome by the bonding impediment of the Safety Responsibility Act.

To remedy this service defect, in 1973, Congress enacted the Long Arm Statute.

The salient features of the Long Arm Statute were:

13-422. Personal jurisdiction based upon enduring relationship.

A District of Columbia court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, the District of Columbia as to any claim for relief.

13-423. Personal Jurisdiction based upon conduct.

(a) District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's.

(1) transacting any business in the District of Columbia;

(2) contracting to supply services in the District of Columbia.

(3) Causing torious injury in the District of Columbia by an act or omission in the District of

Columbia;

(4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent court of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;

(5) Having an interest in, using, or possessing real property in the District of Columbia;

(6) contracting to insure or act as surety for or on any person, property, or risk, contract, obligation, or agreement located, executed, or to be performed within the District of Columbia at the time of contracting unless the parties otherwise provide in writing; or

(7) not applicable.

(c) Notwithstanding the provisions of subparagraphs (A) through (D), the Court may exercise personal jurisdiction if there is any basis consistent with the United States Constitution for the exercise of personal jurisdiction.

D.C. Code Section 13-334(a) is the predecessor to D.C. Code Section 13-423 and continues to exist as a basis for personal jurisdiction, alongside this section's more comprehensive long arm provisions. AMAF Int l Corp. v. Ralston Purina Co. (App. D.C.) 428 A.2d 849 (1981). Moreover, the

District of Columbia Courts takes guidance from neighboring jurisdictions of Maryland and Virginia in the interpretation of their long-arm statute. Mitchell EnergyCorp. v.Mary Helen Coal Col., 524 F. Supp. 558 (D.C. 1981).

In fact, utilizing Maryland cases as a guideline, the District of Columbia Long Arm Statute has been interpreted to embrace those purposeful acts, "in relation to (a) contract, albeit preliminary or (b) subsequent to its execution. Norvack vs. National Hot Rod Ass n, 247 Md. 350, 357, 231 A.2d 22, 26, (1967) and incorporated a modified version of the Uniform Interstate International Procedure Act, to give the then District of Columbia Court of General Sessions, (predecessor to the Superior Court of the District of Columbia) expanding jurisdiction with regard to transacting any business", Mouzavires v. Baxter, 434 A.2d 988 at 991 (1981). Thus it becomes patently clear that the Long Arm Statute was never intended to impact upon matters that were non-mercantile in nature. The Long Arm Statute has no applicability to Plaintiff's case, filed with the Superior Court of the District of Columbia. Plaintiff s case is a non-mercantile matter and is a transit tort action. The Court's jurisdiction over the Defendant therein does not depend upon a mercantile transaction as prescribed in D.C. Code 13-422 and 423 (1983, Edition, as amended).

The case before this Court, Edna M. Jennings, Appellant vs. Sandra E. Coutscoudis, et al., Appellee, 96-CV 1752, arose out of an automobile

collision in Fredericksburg, Virginia, a contiguous area to the District of Columbia, and less than fifty (50) miles distant from the District, a case which through custom and usage was reachable by D.C. Sup. Ct. Civil Rule 4(c) and 4(f). A Court of the District of Columbia, long ago in White v. Central Dispensary and Emer. Hosp., 69 App. D.C. 122 at 129, held that an action in tort for negligence is transitory in nature.

Service was effectuated upon the Defendants pursuant to Sup. Ct. Civil Rule 4(c) and 4(f). The defendants challenged the Service of Process for Lack of In Personam Jurisdiction under D.C. Code Sections 13-422 and 13-423 of the Long Arm Statute. This was an anomalous and a novel challenge since this was a misapplication of the Long Arm Statute. This case had no features of a mercantile transaction and to extend its application to this case was error.

The Court then must consider, whether it can, by exercising jurisdiction over Appellant's case, meet the requirements of due process and the public and private interest delineated in Gulf Oil v. Gilbert, 330 U.S. 501-509,, (1947) and the nexus requirements, of Jenkins v. Smith, 535 A.2d 1367 (D.C. 19878) (en banc), a forum non conveniens case, based upon its expanded jurisdiction under the Reorganization Act of 1970 and the rules it promulgated pursuant to Sup. Ct. Civil Rule 4(f).

D.C. Code 13-331, entitled, "Service under other laws and rules of Court," provides: This Chapter does not limit or affect the right to serve process in any other manner now or hereafter required or permitted by, (2) Rule of Court, (December 23, 1963), July 29, 1970, 1983 Edition, as amended and D.C. Code 13-424, entitled "Service Outside the District of Columbia, states that when the exercise of personal jurisdiction is authorized by this sub-chapter, service may be made outside the District of Columbia. This is especially true when a non-resident Defendant resides no more than fifty (50) miles away, and, a Court may assert personal jurisdiction over a non-resident Defendant where service of process is authorized by statute and where th4e service of process as authorized is consistent with due process. Mouzavires v. Baxter, App. D.C. 434 A.2d 988 (1981) cert. denied 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875 91982), Smith vs. Jenkins, App. D.C. 452 A.2d 333 (1982).

This Plaintiff, a domiciliary in and a resident of the District of Columbia exercised her choice of forum in which her suit could be filed by selecting a court of general jurisdiction in her place of residence, in conformance with the due process requirements of Gulf Oil v. Gilbert, 333 U.S. 501 (1947).

Due Process requirements are met where the Defendant sued, is personally

served and has actual notice of the complaint against him/her and where by appearing to defend the action, he/she is not placed at a disadvantage with regard to marshalling proof to defend against the complaint. See Gulf Oil v. Gilbert, supra.

Under D.C. Code, 11-921, 1983 Edition, as amended, the Superior Court was granted general jurisdiction over any action filed therein; except the jurisdiction, specifically reserved unto the United States District Court.

In this matter where the Defendants have received notice of Plaintiff's Complaint by having a copy of the Summons and Complaint personally served upon them, the notice requirement of due process was met and the Court should have exercised its jurisdiction, especially as it pertains to this tort action filed by a resident of the District of Columbia.

Although, the Fifth Amendment contains no equal protection clause, the due process clause of the Fifth Amendment authorizes traditional equal protection analysis of federal rules and therefore, the equal protection clause has substantive as well as procedural aspects. Hampton v. Mow Sun Wong, 426 U.S. 88, 482 L.Ed. 2d 495, 96 S. Ct. 1895 91976) and as it applies to the District of Columbia, the due process clause of the Fifth Amendment guaranty against treatment which underlies the equal protection clause of the

Fourteenth Amendment. Washington Free Community v. Wilson, 157 U.S. App. D.C. 360, 484 F.2d 1078 (1973).

In the instant case, the trial Court, no doubt, had in mind these principles when it issued an Order on May 31, 1996, granting Plaintiff the right to have the Defendants served by the Sheriff's Office of Spotsylvania County, Virginia, after the Defendants had on two occasions wilfully avoided service of process.

Subsequently, after permitting service by the Sheriff's Office of Spotsylvania County, Virginia, and after Plaintiff's had relied upon the Court's Order, allowing Service of Process upon the non-resident Defendants by the Sheriff's Office, the Court upon motion of the Defendant's to quash said service, granted Defendants' Motion to Quash the Service of Process and dismissed the Complaint. In so doing, the dismissal of Plaintiff's complaint had the effect of divesting the Plaintiff of due process and equal protection, to have her cause of action, litigated in _the place_of her_domicile_, namely the District of Columbia, the place of her domicile where she had a substantial nexus for her complaint. Additionally, the Order of the Court served to derogate SCR Rules 4(c) and (f) of the Rules of the Superior Court of the District of Columbia, especially since the area where the Defendants resided, was contiguous to and within proximity to the District of Columbia.

II

The Trial Court's Ruling, quashing the Plaintiff's service of the Summons and Complaint upon the Defendants for Lack of in Personam Jurisdiction was a manifest abuse of discretion and denial of equal protection of Law.

The trial Court in quashing the Service of Process and dismissing the Complaint, showed no deference to the due process clause of the Fifth Amendment and the equal protection clause of the Fourteenth Amendment. This lack of deference by the Court was prejudicial to the Plaintiff, thereby depriving her of her cause of action to litigate in her choice of forum, the situs of her domicile and constitutes an abuse of discretion by the Court.

Had the Court given deference to the principles of due process and equal protection, the Court would have examined a host of cases which this Court may have considered in guiding it's deliberations with regard to deciding the outcome of this case and not abused it's discretion.

In reviewing "abuse of discretion" the Court should have examined Dunkwu v. Neville, 575 A.2d 293, 294 (D.C. 1990), where the Court stated that "we have

described our review for abuse of discretion as follows".

"(a) Although only a clear showing of abuse of discretion will suffice to reverse the trial court's decision, such ruling receives closer scrutiny than most exercises of trial court discretion, and convincing circumstances may demonstrate trial court error as a matter of law, and quoting Jenkins, supra 535 A.2d at 1370" (quoting in part Washington v May Dept. Stores), 388 A.2d 484, 486, D.C. (1978). Significantly, we also noted that:

"While in general, unless the balance is strongly in favor of the Defendant, the Plaintiff's choice of forum should rarely be disturbed "Mills v. Aetna Fire Underwriters, Inc. Co., 511 A.2d 8, 10 (D.C. (1986), quoting Gulf Oil v. Gilbert 330 U.S. 501, 508 (1947), that rule pertains especially when the Plaintiff is a resident of the District of Columbia."

"Thus it becomes axiomatic that a trial court must exercise its discretion prudently and the trial court must be especially cautious where it utilizes its discretion of dismissal".

"Dismissal should be imposed

sparingly". Frazier v. Center Motors, Inc., 418 A.2d 1018, 1020 (D.C. 1980) and Beckwick v. Beckwick, 379 A.2d 955 (D.C. 1977).

In Garces v. Bradley, 299 A.2d 142 (D.C. 1973), it was held that the caution imposed upon a trial judge when exercising discretion, is a reflection primarily of our well established preference for deciding cases on their merit. Bradley at 144.

In the instant case, on September 23, 1996, the trial Court entered an Order, Quashing Service of Process and dismissing the Complaint. The trial Court Order stated, "the issue is not whether the District of Columbia is the best source for the litigation, but whether the District has so little to do with the case that its Court should decline to hear it. Jenkins v. Smith, 535 A.2d, 1367 (D.C. 1987) (en banc)".

Upon Plaintiff's filing a Motion for Reconsideration, on October 21, 1996, the trial Court affirmed its previous ruling.

The trial Court abused its discretion and deprived the Plaintiff of equal protection and due process when it affirmed its prior Order and stated as reasons therefor the following:

> "The prior Order of this Court quashing the service of Summons upon the Defendants and dismiss the

Complaint for want of personal jurisdiction over the Defendants be, and the same is **AFFIRMED**."

The Court's failure to adhere in its Order of September 23, 1996, to its ruling of October 21, 1996 resulted in two disparate decisions.

The Court in its earlier Order, dated September 23, 1998, quashing the Plaintiff's Summons and Complaint and basing its decision upon Jenkins v. Smith, supra, misled counsel to believe that since Jenkins v. Smith, supra, was a forum non-conveniens case, Plaintiff in her Motion for Reconsideration had to demonstrate to the Court, Plaintiff's contact with the District of Columbia. Plaintiff, therefore, in her Motion for Reconsideration then established her myriad contacts with the District of Columbia, embracing in her motion, the independent evaluation of the private and public factors set forth in Gulf Oil v. Gilbert, 330 U.S. 501-509, 1947.

In Gulf Oil v. Gilbert, supra, the Court in considering due process requirements, concluded that due process requirements are met where the defendant is personally served; has notice of the Complaint and where by appearing to defend the action, is not placed at a disadvantage with regard to marshalling proof to defend against the Complaint and in, Jenkins v. Smith, 535 A.2d 1367 (D.C. 1987), by resolving whether the District of Columbia has so little to do with the case that its Court should

decline to hear it. Jenkins, supra 535 A.2d at 1371, (this principle was also affirmed Additionally, the "public private" interest evaluation, remains the extant litmus test:

> "Factors relevant to the private interest concern the ease, expedition, and expense of the trial, and include the relative ease as access to proof; availability and cost of compulsory process; the enforceability of a judgment once obtained; evidence of an attempt by the Plaintiff to vex or harass the defendant by his choice of forum; and other obstacles to a fair trial... Factors related to the public interest includes administrative difficulties caused by local Courts docket congested with foreign litigation; the imposition of jury duty on a community having no relationship to the litigation; and the inappropriateness of requiring local Courts to interpret the laws of another jurisdiction".

The Trial Court, in support of its first order, quashing the Plaintiff's Summons and Complaint, treated the issue of service of the Summons and complaint upon the non-resident motorist of Spotsylvania County, Virginia, as a forum non-conveniens matter or at least, one so closely parallel, as to be of kindred nature, and relied in its order upon the partial reasoning of the concluding paragraph of Jenkins v.

Smith, supra, which identifies the ultimate question that must be resolved by a forum non conveniens analysis:

> " [Whether the District of Columbia is the best forum for this litigation is not the issue, rather, [the court] must determine the District has so little to do with the case that its Court should decline to hear it]".
>
> In her Motion for Reconsideration of the Court's initial Order, Plaintiff clearly demonstrated her overwhelming nexus to the District of Columbia when she showed that:

She is domiciled in and a resident of the District of Columbia.

Appellant is employed by the District of Columbia Government; her work location is in the District of Columbia from which she lost time from her employment.

Appellant received treatment from the Pain Therapy Group, located at 100 Irving Street, N.W., in the District of Columbia.

Appellant received treatment from Drs. Morowitz, Singer, Marion and Laessing, located at the 108 Irving Street, N.W., in the District of Columbia.

Appellant received treatment from the Metro Washington Orthopaedic Association located in nearby Oxon Hill,

Maryland.

Appellant had an operation at Hadley Memorial Hospital located on Martin Luther King, Jr. Avenue, S.W., in the District of Columbia as the result of her injuries and received treatment at the hospital.

Appellant received treatment from Dr. William Dorn, located at 2600 Virginia Avenue, N.W., in the District of Columbia.

Appellant received treatment from the Physical Medicine Rehabilitation Center, located at 2600 Virginia Avenue, N.W., in the District of Columbia.

Appellant received treatment from the Neurodiagnostic Associates P.C., located at 106 Irving Street, N.W. in the District of Columbia.

Appellant is a member of Blue Cross-Blue Shield of the National Capital Area, located at 550 - 12th Street, S.W., in the District of Columbia, which paid for some of her treatment

In Contrast to these significant contacts with the District of Columbia, Appellant's only contact with the State of Virginia was being there for a visit and receipt of emergency treatment at Mary Washington Hospital. Under these circumstances, Appellant had every expectation that she could have filed her transit tort action in the Superior

Court for the District of Columbia. Moreover, Defendants, such as the Appellees, who resides less than fifty (50) miles from the District of Columbia, who collides with an automobile operated by a resident of the District of Columbia, at a place, at that distance has every expectation that a suit may be brought in either Virginia or the District of Columbia.

The two conflicting Orders, entered by the trial Court in this matter served to becloud the issue which this case presents and the action of the trial court as affirmed by the D.C. Court of Appeals in the interpretation of its own statutes, denied the Plaintiff due process and equal protection in violation of the fifth and Fourteenth Amendments to the United States Constitution.

## CONCLUSION

For all of the reasons set forth herein, Petitioner requests that this Court grants this Petition and issue a Writ of Certiorari to the District of Columbia Court of Appeals.

Respectfully submitted,

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Dated December 25, 1998

# APPENDIX

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Washington, D.C. 20001

Edna M. Jennings

Plaintiff

CA No. 96ca2190

Sandra Coutscoudis, et. al.

Defendant

ORDER

Defendants Motion to Quash Service and Dismiss for Lack of Personal Jurisdiction

Upon consideration of the motion filed by Defendant and after hearing argument on behalf of all parties concerned, it is, by the Court, this 23rd Day of September, 1996.

ORDERED:

(1) That the motion be, and it is hereby, x GRANTED DENIED

(2) That "...the issue is not whether the District of Columbia Is the best forum for the litigation but whether the District has so little to do with the case that its Court should decline To hear it." Jenkins v. Smith, 535 A.2d 1367, (D.C. 1987) (en banc)

/s/ Michael Rankins
JUDGE

Willie Faye Garrett, Esq.
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IN THE SUPERIOR COURT FOR THE DISTRICT
OF COLUMBIA
Civil Division

EDNA M. JENNINGS

Plaintiff

Civil Action No. 0002190-96
Judge Rankin/Calendar #6

vs.

SANDRA E. COUTSCOUDIS, et al.

Defendants

ORDER

Upon consideration of the Plaintiff s Motion to Reconsider, it is by the Court this 15th Day of October , 1996;

ORDERED; that the motion be, and the same hereby is **DENIED**; and it is further,

ORDERED, that the prior Order of the Court quashing the service of Summons upon the defendants and dismiss the Complaint for want of personal jurisdiction over the Defendants be, and the same hereby is **AFFIRMED**.

/s/Micheal Rankins
JUDGE

DISTRICT OF COLUMBIA COURT OF APPEALS
No. 96-CV-1752

EDNA M. JENNINGS, APPELLANT
v.
SANDRA COUTSCOUDIS, APPELLEE.

Appeal from the Superior Court of the
District of Columbia
Civil Division
(Hon. Michael L. Rankin, Trial Judge)

(Argued April 22, 1998 Decided April 24, 1998)

Before FARRELL and REID, Associate Judges, and BELSON, Senior Judge.

**MEMORANDUM OPINION AND JUDGMENT**

Appellant Edna M. Jennings appeals from orders of the trial court quashing service of process upon appellees Sandra E. and Constantinos Coutscoudis, and dismissing her personal injury complaint for lack of personal jurisdiction. We affirm.

I.

Ms. Jennings alleges she was injured on August 28, 1993, in Spotsylvania, Virginia, when the car she was driving collided with one driven by Ms. Coutscoudis and owned by Mr. Coutscoudis. Ms. Jennings filed a personal injury complaint in the triel court on September 26, 1995. Her complaint was dismissed without prejudice on December 6, 1995, due to

failure to effect service of process on appellees.

Ms. Jennings refiled her complaint on March 19, 1996. By May 31, 1996, she still had not served her complaint on appellees, and requested an extension of time for service. The motion was granted, and on July 9, 1996, service of process was accomplished through the Spotsylvania County's Sheriff's Department. Appellees filed a motion to quash service and to dismiss the complaint for lack of personal jurisdiction.

On August 26, 1996, Ms. Jennings filed an apparently identical complaint against appellees in the United States District Court for the District of Columbia. With respect to the complaint filed in the Superior Court, appellees motion to quash service and dismiss the complaint was granted on September 23, 1996 and on October 21, 1996, the trial court denied Ms. Jennings' motion for reconsideration. On September 27, 1996, the United States District Court dismissed Ms. Jennings' complaint for lack of personal jurisdiction. Jennings v. Coutscoudis, 941 F. Supp. 5 (D.D.C. 1996)

II.

As the United States District Court made plain in Jennings, service of process in Virginia cannot confer personal jurisdiction over appellees in the District of Columbia where no such

jurisdiction exists. Under D.C. Code 13-422 and 13-423 (1995), the trial court did not have personal jurisdiction over appellees. Section 13-422 (a) confers "personal jurisdiction over a person domiciled in, organized under the law of, or maintaining its principal place of business in, the District of Columbia as to any claim for relief." Since appellees were not here, and did not maintain a principal place of business in the District, there is no jurisdiction Under 13-422. Nor is there personal jurisdiction over appellees under 13-423 because they: (1) do not transact any business or provide any services in the District; (2) did not cause a tortious injury in the District; (3) do not have any property here; (4) do not regularly do or solicit business in the District; (5) do not act as a surety on transactions in the District; and (6) do not have any parent or child relationship in the District. See D.C. Code 13-423 (a); Trerotola v. Cotter, 601 A.2d 60, 63 (D.C. 1991).

"A Court may properly assert personal jurisdiction over a nonresident where a statute authorizes service of process and where such service is consistent with due process. Smith v. Jenkins, 425 A.2d 333, 336 (D.C. 1982) (citation omitted). Here, 13-422 does not authorize service of process on appellees. Moreover, given the requirements set forth in 13-423, service on them is inconsistent with due process.

Accordingly, for the foregoing reasons, we affirm the judgment of the trial court.

So ordered

FOR THE COURT

/s/GARLAND PINKSTON, JR.
Clerk of the Court

No. 96-CV-1752

Honorable Michael L. Rankin

Clerk, Superior Court

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District of Columbia
Court of Appeals

No. 96-CV-1752

EDNA M. JENNINGS,
Appellant,

CA2190-96

v.

SANDRA E. COUTSCOUDIS,

Appellee.

BEFORE: Wagner, Chief Judge; Terry, Steadman, Schwelb, *Farrell, King, Ruiz, and *Reid, Associate Judges; *Belson, Senior Judge.

ORDER

On Consideration of appellant s petition for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

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Supreme Court, U.S.
FILED
MAR 30 1999
OFFICE OF THE CLERK

(2)

No. 98-1406

In The

# Supreme Court of the United States

October Term, 1998

EDNA M. JENNINGS,

*Petitioner,*

vs.

SANDRA E. COUTSCOUDIS, et vir,

*Respondents.*

On Petition For Writ Of Certiorari To
The District Of Columbia Court Of Appeals

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Should this Honorable Court agree to review a decision of the District of Columbia Court of Appeals which affirmed the quashing of service of process upon the respondents and the dismissal of a personal injury complaint on the basis of the District of Columbia long-arm statute, where the decision is not in conflict with other decisions of the District of Columbia Court of Appeals or decisions of the United States District Court for the District of Columbia or the United States Court of Appeals for the District of Columbia Circuit?

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## STATUTES AND RULES

This case involves *District of Columbia Code* §§ 13-422 and 13-423 and Rule 4 of the District of Columbia Superior Court Rules of Civil Procedure. The pertinent text of these statutes and Rule 4 is set forth in the brief.

## STATEMENT OF THE CASE

### Procedural Background

Edna Jennings' civil complaint for personal injury was filed in the Superior Court of the District of Columbia on March 19, 1996. Jennings had filed an identical complaint in 1995 but that action was dismissed due to her failure to affect service of process on the defendants. In response to the 1996 action, the defendants filed a motion to quash service and motion to dismiss for lack of personal jurisdiction. On September 23, 1996, Judge Michael Rankin entered an Order granting defendants' motion to dismiss for lack of personal jurisdiction and quashing the service of the summons upon the defendants. Jennings' request that Judge Rankin reconsider his decision was rejected and the plaintiff then noted an appeal to the District of Columbia Court of Appeals. The Court of Appeals affirmed the Order of the Trial Court in a Memorandum Opinion and Judgment set forth in full in the Appendix to plaintiff's Petition.

### Factual Background

Plaintiff Jennings' 1996 complaint alleges a motor vehicle accident occurring in Fredericksburg, Virginia on

August 28, 1993. Jennings, a resident of the District of Columbia, alleges that she sustained injuries and damages as the result of the negligence of Sandra Coutscoudis in the operation of a vehicle owned by her husband, Constantinos Coutscoudis. The complaint acknowledges that the Coutscoudises are residents of Virginia. Jennings' complaint asserted jurisdiction in the Superior Court pursuant to the general jurisdiction statute, § 11-921, *District of Columbia Code.*

The defendants moved to dismiss the complaint and quash the service of process based on a lack of personal jurisdiction. A supporting affidavit executed by the Coutscoudises established that they resided in Spotsylvania County, Virginia and were both retired. The affidavit further established that neither defendant worked in, nor maintained a principal place of business in, the District of Columbia. Both defendants were served with the Superior Court summons and complaint at their home in Spotsylvania, Virginia by a Deputy Sheriff of Spotsylvania County.

## REASONS THE WRIT SHOULD BE DENIED

The Superior Court of the District of Columbia does not have personal jurisdiction over the defendants under the circumstances of this case. The plaintiff overlooks the fact that service of process over non-resident defendants must be authorized by statute or rule. Rule 4, Superior Court Rules of Civil Procedure, places territorial limits on the service of summons effective to establish personal jurisdiction over defendants. Those limits do not embrace

these non-resident defendants unless they could be subjected to the jurisdiction of the Superior Court of the District of Columbia.

The *District of Columbia Code* sets forth two methods by which a District of Columbia court may exercise personal jurisdiction over persons outside the District of Columbia – personal jurisdiction based upon an enduring relationship (§ 13-422) and personal jurisdiction based upon conduct (§ 13-423). The defendants are individuals who neither reside nor work in the District of Columbia and are, therefore, not subject to personal jurisdiction under § 13-422. The incident giving rise to plaintiff's civil complaint is a motor vehicle accident which occurred in Virginia. The defendants cannot, therefore, be said to have caused injury in the District of Columbia under § 13-423.

The defendants are not subject to personal jurisdiction of the Superior Court of the District of Columbia under the facts of this case and the Court cannot acquire jurisdiction over the defendants by issuing (and serving) a summons which exceeds the territorial limitation of Rule 4(k). Accordingly, the Superior Court of the District of Columbia cannot gain personal jurisdiction over these residents of Virginia by service in Virginia under the circumstances of this case and this Honorable Court should decline to grant the writ.

While the Superior Court of the District of Columbia is a court of general jurisdiction that has authority to adjudicate civil actions such as motor vehicle torts, the mere fact that the present action is a civil tort and the **plaintiff** is a resident of the District of Columbia does not

provide the Superior Court of the District of Columbia with jurisdiction over all persons. In order to entertain a viable action against a non-resident defendant, not only must the service be within limits set by the due process clause of the Constitution, but service of process over the non-resident defendant must be authorized by statute or rule. *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913 (D.D.C. 1980).

Service upon the defendants of a summons issued by the Superior Court must comply with Rule 4 of the Superior Court Rules of Civil Procedure. Subsection (k) places territorial limits on effective service:

> **Rule 4. Summons**
>
> * * * * * *
>
> **(k) Territorial Limits of Effective Service.**
>
> (1) Service of a summons or filing an acknowledgment of service is effective to establish jurisdiction over the person of a defendant
>
> **(A)** who could be subjected to the jurisdiction of this Court, or,
>
> **(B)** Who is a party joined under Rule 14 or Rule 19 and is served at a place not more than 100 miles from the place of hearing or trial, or
>
> **(C)** (Vacant)
>
> **(D)** when authorized by a statute of the United States or the District of Columbia.

The defendants are not potential parties to be joined under Rule 14 (third party practice) or 19 (joinder of persons needed for just adjudication) nor has the plaintiff alleged the existence of any other federal statute or special statute of the District of Columbia authorizing service

of summons over non-resident defendants in a simple tort case. Accordingly, sub-sections **(B)** and **(D)** are not applicable and the plaintiff cannot take refuge therein.

Subsection **(A)** of Rule 4(k) would recognize service of process in Virginia as effective **if** the defendants " . . . could be subjected to the jurisdiction of this Court . . . " Accordingly, in order to ascertain whether the defendants could be subject to the jurisdiction of the Superior Court of the District of Columbia under the circumstances of this case, it is necessary to examine the District of Columbia's long-arm statute.

Ms. Jennings' complaint is one for personal injuries arising out of a motor vehicle accident which occurred in Fredericksburg, Virginia. The defendants are residents of Spotsylvania County, Virginia and were served in Virginia. The *District of Columbia Code,* Chapter 4 – Civil Jurisdiction and Service Outside the District of Columbia – Subchapter II – Bases of Personal Jurisdiction over Persons Outside the District of Columbia – sets forth the manner in which a District of Columbia court may exercise personal jurisdiction over persons outside the District of Columbia. There are only two methods:

> **§ 13-422. Personal jurisdiction based upon enduring relationship.**
>
> A District of Columbia court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, the District of Columbia as to any claim for relief.

and

**§ 13-423. Personal jurisdiction based upon conduct.**

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by any agent, as to a claim for relief arising from the person's –

(1) transacting any business in the District of Columbia;

(2) contracting to supply services in the District of Columbia;

(3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia;

(4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;

(5) having an interest in, using, or possessing real property in the District of Columbia;

(6) contracting to insure or act as surety for or on any person, property, or risk, contract, obligation, or agreement located, executed, or to be performed within the District of Columbia at the time of contracting, unless the parties otherwise provide in writing; or

(7) marital or parent and child relationship in the District of Columbia if . . .

* * * * * * * * * * * *

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

With regard to § 13-422, the defendants are **not** "domiciled in, organized under the laws of, . . . (nor do they maintain their) . . . principal place of business in, the District of Columbia . . . ". The defendants are retired and live in Spotsylvania County, Virginia. They are, therefore, not subject to personal jurisdiction under § 13-422 and are not subject to service of process outside the District of Columbia with a summons issued by a District of Columbia court.

With regard to § 14-423, the accident giving rise to the plaintiff's complaint occurred in Fredericksburg, Virginia. In fact, **no** events or omissions giving rise to plaintiff's claim occurred in the District of Columbia. Accordingly, the plaintiff's claim **cannot** be said to arise from any of the activities enumerated in that section. The defendants, therefore, are not subject to personal jurisdiction under § 13-423 and are not subject to service of process outside the District of Columbia with a summons issued by a District of Columbia court.

Inasmuch as neither *District of Columbia Code* §§ 13-422 or 13-423 are applicable to the facts of this case, and inasmuch as plaintiff has not alleged the existence of any other statute empowering a District of Columbia court with personal jurisdiction over persons outside the District of Columbia, simple service in Virginia with a Superior Court summons is ineffective as a means by

which the Superior Court may acquire jurisdiction over these non-resident defendants.

Plaintiff's recitation of the factual background and her efforts to serve the defendants in Virginia and references to an earlier-filed suit (dismissed by the Court) in support of her position are, for the most part, facts not present in the record and facts having no relevance or materiality to the issue of whether the Superior Court lacks *in personam* jurisdiction over the defendants. While the plaintiff spends much effort in establishing her contacts with the District of Columbia, **her** contacts are irrelevant in addressing the issue of whether personal jurisdiction can be exercised over the defendants by the Superior Court. Neither the fact that the plaintiff received medical care in the District of Columbia following the accident, nor the fact that her loss of earnings in the District of Columbia resulted from the accident constitute a basis for establishing long-arm jurisdiction over non-resident defendants. *Perry v. Criss Bros. Iron Works*, 741 F.Supp. 985 (D.D.C. 1990).

A significant portion of plaintiff's brief is actually an argument in opposition to a *forum non conveniens* argument, an argument not advanced by the defendants. A *forum non conveniens* discussion only arises where more than one court has both subject matter and *in personam* jurisdiction. In the instant case, it is clear that the Superior Court does not have personal jurisdiction over the defendants under the circumstances of this case, and, thus, an analysis of the relative convenience of competing forums does not arise.

Finally, the Court should be aware that this is the plaintiff's second attempt at a bite of the apple. As the decision of the District of Columbia Court of Appeals discloses, on August 26, 1996 the plaintiff filed an identical complaint for damages against these defendants for the same cause of action in the United States District Court for the District of Columbia. The defendants challenged the personal jurisdiction of that Court over them and Judge Charles Richey entered a Memorandum Opinion and Order granting the defendants' motion to dismiss for lack of personal jurisdiction, quashing the potential service of the summons upon the defendants and denying plaintiff's request for removal of the case to the United States District Court for the Eastern District of Virginia. *Jennings v. Coutscoudis*, 941 F. Supp. 5 (D.D.C. 1996).

Judge Richey examined FRCP 4 and the District of Columbia long-arm statute and concluded:

> The defendants could not be subjected to the jurisdiction of a court of general jurisdiction in the District of Columbia because they have no enduring relationship with the District nor did their allegedly tortious conduct have a nexus with the District.

Judge Richey also observed that if the court of general jurisdiction does not have personal jurisdiction over the defendants, service of summons cannot confer such jurisdiction.

Jennings noted an appeal to the United States Court of Appeals for the District of Columbia Circuit from Judge Richey's orders and that Court issued a *per curiam*

decision affirming Judge Richey's decision. *Jennings v. Coutscoudis* 1997 WL 411792 (D. C. Cir.).

## CONCLUSION

There being no basis for personal jurisdiction over non-resident defendants by a District of Columbia court for a personal injury claim arising from a motor vehicle accident occurring in Spotsylvania County, Virginia under the circumstances of this case, and there being no statute or rule authorizing extra-territorial service of summons, the defendants submit that the summons issued by the Superior Court and served upon the defendants in Virginia should have been quashed as that service cannot exceed the territorial limitations of Rule 4(k). Respondents pray that this Court decline to grant the writ presented as the Superior Court of the District of Columbia does not have personal jurisdiction over the respondents under the circumstances of this case and the issue needs no further review.

Respectfully submitted,

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